

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1738

Introduced by Assembly Member Chau

February 14, 2014

An act to amend Sections 5910 and 5915 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1738, as amended, Chau. Common interest developments: dispute resolution.

The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, providing a means by which the member and the association may explain their positions.

This bill would additionally require that an association's dispute resolution procedure include a means by which the ~~legal counsel~~ *attorney* for a member or an association *or another person* may explain their position if advance written notice is provided, as specified. ~~The bill would require this procedure to allow another person who is not~~

~~legal counsel to assist the member or the association without prior notice. The bill would require the parties to bear their own costs for legal counsel an attorney.~~

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute is deemed a fair, reasonable, and expeditious dispute resolution procedure.

This bill would additionally require the alternative procedure to provide either party the right to have ~~legal counsel present~~ *an attorney or another person participate* when meeting and conferring if advance written notice is provided, as specified. ~~The bill would allow another person who is not legal counsel to assist the member or the association without prior notice. The bill would require the parties to bear their own costs for legal counsel an attorney.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5910 of the Civil Code is amended to
2 read:
3 5910. A fair, reasonable, and expeditious dispute resolution
4 procedure shall at a minimum satisfy all of the following
5 requirements:
6 (a) The procedure may be invoked by either party to the dispute.
7 A request invoking the procedure shall be in writing.
8 (b) The procedure shall provide for prompt deadlines. The
9 procedure shall state the maximum time for the association to act
10 on a request invoking the procedure.
11 (c) If the procedure is invoked by a member, the association
12 shall participate in the procedure.
13 (d) If the procedure is invoked by the association, the member
14 may elect not to participate in the procedure. If the member
15 participates but the dispute is resolved other than by agreement of
16 the member, the member shall have a right of appeal to the board.

(e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable if the agreement is in writing.

(f) (1) The procedure shall provide a means by which the member and the association, with the assistance of ~~legal counsel~~ *an attorney or another person*, if they so choose, may explain their respective positions and seek to negotiate a mutually satisfactory resolution. ~~If either or both parties intend to have legal counsel participate in the procedure, the procedure shall require at least five days written notice of this intent to be given to the other party. If this notice is not provided, the party not receiving the required notice shall have the election of postponing the procedure until the notice requirement is met.~~

~~(2) The procedure shall allow another person who is not legal counsel to assist the member or the association in the procedure without prior notice.~~

(2) If either a member, an association, or both, intends to have an attorney or another person participate in the procedure, the procedure shall require the member, the association, or both, to provide 10 days' written notice of this intent to be given to the other party pursuant to the methods identified in subdivision (b) of Section 4035 and subdivision (a) of Section 4040. If notice is not provided, the party not receiving the required notice shall have the election of postponing the procedure until the notice requirement is met.

(g) A member of the association shall not be charged a fee to participate in the process. Each party shall bear *the cost of the party's own costs attorney fees*, ~~if any, for legal counsel any~~.

SEC. 2. Section 5915 of the Civil Code is amended to read:

5915. (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

1 (2) A member of an association may refuse a request to meet
2 and confer. The association may not refuse a request to meet and
3 confer.

4 (3) The board shall designate a director to meet and confer.

5 (4) (A) The parties shall meet promptly at a mutually convenient
6 time and place, explain their positions to each other, and confer
7 in good faith in an effort to resolve the dispute. Each party shall
8 have the right to have legal counsel present *an attorney or another*
9 *person participate* when meeting and conferring to explain their
10 respective positions and seek to negotiate a mutually satisfactory
11 resolution. ~~A party wishing to have counsel present when meeting~~
12 ~~and conferring must provide written notice to the other party of~~
13 ~~its intent to be represented. If this notice is not provided, the party~~
14 ~~not receiving the required notice shall have the election of~~
15 ~~postponing the meeting until the notice requirement is met.~~

16 ~~(B) A member or association may have another person who~~
17 ~~is not legal counsel present to assist the member or the association~~
18 ~~in the procedure without prior notice.~~

19 *(B) If either a member, an association, or both, intends to have*
20 *an attorney or another person participate in the procedure, the*
21 *procedure shall require the member, the association, or both, to*
22 *provide 10 days' written notice of this intent to be given to the*
23 *other party pursuant to the methods identified in subdivision (b)*
24 *of Section 4035 and subdivision (a) of Section 4040. If notice is*
25 *not provided, the party not receiving the required notice shall have*
26 *the election of postponing the procedure until the notice*
27 *requirement is met.*

28 (5) A resolution of the dispute agreed to by the parties shall be
29 memorialized in writing and signed by the parties, including the
30 board designee on behalf of the association.

31 (c) An agreement reached under this section binds the parties
32 and is judicially enforceable if both of the following conditions
33 are satisfied:

34 (1) The agreement is not in conflict with law or the governing
35 documents of the common interest development or association.

36 (2) The agreement is either consistent with the authority granted
37 by the board to its designee or the agreement is ratified by the
38 board.

1 (d) A member shall not be charged a fee to participate in the
2 process. Each party shall bear *the cost of* the party's own costs
3 *attorney fees*, if any, for legal counsel. *any*.

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